In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 7126 of 2004

Date of Decision: 23.4.2007

Iqbal Singh

…Petitioner

Versus

Punjab State Electricity Board and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr. Madan Mohan, Advocate,
for the petitioner.

Mr. Amit Mehta, Advocate,
for respondent Nos. 1 to 4.

Mr. I.P.S. Doabia, Advocate,
for respondent No. 5.

JUDGMENT

M.M. KUMAR, J

In the instant petition filed under Article 226 of the Constitution the prayer made by the petitioner is for issuance of a writ in the nature of mandamus directing the respondents to count the work charged service rendered by the petitioner before being regularised, as qualifying service for the purposes of pension. A further prayer has been made that the pensionary benefits of the petitioner be determined on the basis of average emoluments for the last 10 months of the pay actually drawn by him i.e. Rs. 6,100/- as

against Rs. 5,700/-, which has been arrived at by the respondents. Further re-computation of pension and other pensionary benefits has been claimed along with release of the arrears with interest @ 18% per annum.

The petitioner was initially appointed as Supervisor on work charge basis vide appointment letter dated 25.9.1967 (P-1). Subsequent details with regard to the service particulars of the petitioner have been given in para 4 of the writ petition, which shows that w.e.f. 8.4.1969 to 30.12.1971 he worked as T-Mate (W/C) and for the period from 31.12.1971 to 26.9.1973 he was reverted as Mazdoor (W/C). On 26.9.1973 the services of the petitioner were regularised by the respondent Punjab State Electricity Board. He was promoted as Turner w.e.f. 17.2.1976 and as Tech. Gr. I w.e.f. 18.1.1997. On 31.8.2000, the petitioner retired from service on attaining the age of superannuation. He was held to be drawing basic pay of Rs. 6,100/- at the time of his superannuation in the scale of Rs. 4150-6750. It has been asserted that for the purposes of calculating gratuity, the respondent Board has taken into consideration the entire service rendered by the petitioner from 8.4.1969 to 31.8.2000. However, the pensionary benefits have been released to the petitioner by reckoning his service from 26.9.1973 to 31.8.2000, meaning thereby only the regular service rendered by him was considered ignoring the work charge service. In this manner, the last pay drawn has been taken to be Rs. 5,700/- instead of Rs. 6,100/-, which was actually drawn by the petitioner. The petitioner has placed reliance

on the instructions dated 29.5.1992 (P-7) issued by the respondent Board which prescribes that work charge service rendered prior to 1.1.1986 should be counted as a qualifying service for the purposes of pension. In order to get his due, the petitioner made various representations as detailed in para 7 of the writ petition. However, requests of the petitioner could not bear any fruits.

After hearing the learned counsel for the parties and perusing the record, we are of the considered view that this petition deserves to be allowed. It is appropriate to notice here that the service particulars as mentioned by the petitioner in para 4 of the writ petition have been admitted by respondent Nos. 1 to 4 in the corresponding para of their written statement. However, respondent No. 5, in his separate written statement has denied the same to the extent that as per the records of the BBMB, the petitioner was appointed as temporary Mazdoor with RE Ganguwal, vide Memo. Dated 15.10.1970 w.e.f. 17.10.1970. Subsequent factual position as detailed by the petitioner has been reiterated by respondent No. 5.

The matter is not res-integra as the issue raised in the instant petition has already been settled by this Court in the case of **Dharam Pal v. The Superintending Engineer, Operation Circle UNBVNL, Karnal and another** (CWP No. 1150 of 2005, decided on 21.11.2006). In that case reliance has been placed on a Full Bench judgment of this Court in the case of **Kesar Chand v. State of Punjab, 1988 (2) PLR 223** and two Division Bench judgments in the cases of **Hazura Singh v. State of Punjab, 2004 (1) SCT 695** and

Mangat Ram v. Haryana Vidyut Prasaran Nigam Ltd., 2005 (4) SCT 302.

On principle, precedents as well as the rules, the claim of the petitioner deserves to be accepted. Accordingly, we allow the writ petition. The petitioner is held entitled to computation of the work charged service as qualifying service. The respondents shall undertake the exercise of computation of arrears and complete the same within a period of two months from the date a certified copy of this order is supplied to them. The petitioner shall also be entitled to interest on the arrears @ 8 percent per annum from the date the arrears were payable till the date of payment. However, the arrears resulting from re-calculation of pay/pension after adding the aforementioned period of ad hoc service shall be confined only to three years two months preceding the date of filing of the writ petition, which is 3.5.2004.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

April 23, 2007
Pkapoor